FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

Nos. 89 and 509

LIFE & CASUALTY INSURANCE COMPANY OF TENNESSEE, Appellant

v.

OSSIE McCRAY, Appellee

LIFE & CASUALTY INSURANCE COMPANY OF TENNESSEE, Appellant

v.

ALBERT BAREFIELD, Appellee

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PROPOSITION 1

The question involved in these two cases is the constitutionality of the penalty statute of Arkansas which is Section 6155 of Moses and Crawford Digest of that State.

There is also involved in each case on the merits questions relating to the rights of the parties under the contracts as related to certain statutes of both Tennessee and Arkansas. The rule is, as announced by this court in *Scott* v. *Donald*, 165

U. S. 71, 41 L. Ed. 633, that where a case is properly before the Court on a question of constitutional law, involving a state statute, the Court will determine all other questions in the case whether amply raised or not as shown by the following language:

> "It is also argued that the amounts involved in the respective suits were not sufficient to give jurisdiction to the Circuit Court. Although the question of the jurisdiction of the Court below has *not* been certified to us in the manner provided by the 5th section of the Judiciary Act of March 3, 1891, yet, *as the case is before us,* in a case in which the law of a state is claimed to be in contravention of the Constitution of the United States, under another clause of that statute, we have jurisdiction of the *entire* case and of *all questions involved in it. Horner* v. *United States,* 132 U. S. 570 (36:266); *Carey* v. *Houston & T. C. R. Co.,* 150 U. S. 181 (37:1044); *Chappell v. United States,* 160 U. S. 499 (40:510)."

PROPOSITION 2

Insurance Companies are in a legislative straight jacket.

The different State Statutes prescribe the amount of capital stock that must be paid in before any business is done; the character of assets in which the funds must be invested; reserves must be carried to mature each policy; and no contract can be issued unless it is submitted to the different insurance departments and approved. Assets, which are as a matter of fact good and solvent, are not allowed to be counted among admitted assets, unless they come within the terms of the different State investment statutes.

We particularly call the Court's attention to that class of

State statutes, uniform generally in the different States, (in Tennessee being Section 6132 of the Code of 1932 and in Arkansas Section 322 of the Insurance Laws of Arkansas being Section 10 of Act 493 of 1921, which statutes are copied in full in Appellant's brief opposing Motion to Dismiss the Appeal, and being on page 10 and 11 of said brief), which prohibit any *discrimination* between insurants of the same class as to the terms and conditions of the policy and require every insurance contract to be *in writing* and that nothing shall be considered a part of the contract "not specified in the policy contract of insurance." These statutes are for the benefit of the *public* and the other *policyholders* of the Company. These other policyholders have invested their money in these insurance contracts on the theory that the law has required reserves to be carried as a *common fund belonging to all the policyholders,* out of which maturing policies shall be paid. If one policyholder is paid too much out of this common funds or paid out of it *when not* entitled to any payment, this fund is decreased and the rights and investments of the other policyholders are endangered.

The other policyholders are in effect interested parties in all law suits involving policies of the Company, and are entitled to have these statutes construed so as to protect their rights.

This exact question was before the Supreme Court of Louisiana in the case of *Shuff* v. *Life & Casualty Insurance Company,* 164 La. 741, 114 So. 637, in which the Court said:

> "The plaintiff urges and relies upon the proposition that the *agent's knowledge* that the insured was not in sound health on the date of the policy and at the time

when it was delivered was notice to the company, and that the agent did in fact waive the condition that the insured should be in sound health, and that the company was thereby deprived of the protection of that condition stated in the policy. The plaintiff's contention, therefore, stated broadly, is that, even though the insured was *aware* that the *agent* had no *authority* to dispense with or to *alter* any of the conditions of the policy, nevertheless the agent could confer the *authority* upon himself by merely disregarding *these conditions* and limitations expressed in the contract and known to the insured. The argument is not sound. It is the same as to say that it is *not competent* for an insurance company to *protect* itself against unauthorized acts of its agents by any condition or limitation of that kind expressed in its policy contracts. On the contrary, such limitations upon the authority of insurance agents are *not only reasonable* but *absolutely necessary* stipulations in a policy contract, to protect the *investors of their money in such companies against unauthorized transactions between faithless or careless agents and unscrupulous or indifferent patrons.* There is no *reason of public policy* why such conditions and limitations in a policy of insurance should be *nullified* by the courts, or be declared invalid, or be incompetent to protect either party to the contract."

The above Louisiana case, page 661, also holds:

"There is a statute (Act 52 of 1906, as amended by Act 227 of 1916), which declares that every policy of insurance issued by a life insurance company doing business in this state 'shall contain the entire contract between the parties.' The statute was intended, manifestly, not so much to protect the insurance companies as to protect the *policyholders*; for the statute goes further and provides that nothing shall be incorporated in any life insurance policy by reference to any constitution, or by-laws,

or rules, or the application for insurance, or any other writing, unless the same be *indorsed upon or attached to the policy when issued*; that all statements purporting to have been made by the insured shall, in the absence of fraud, be deemed representations and not warranties; that no statement or statements shall be used in defense of a claim under the policy unless contained in a written application and unless indorsed upon or attached to the policy when issued; and that any waiver of the provisions of the statute shall be void. There is *no reason*, however, why the statute, in so far as it declares that every life insurance policy shall constitute or contain the *entire* contract between the parties, should not be as effective in forbidding the *insured* as in forbidding the *company* to contradict the *written instrument* by *parol* or other *extrinsic* evidence. In *Fisett* v. *Mutual Life Insurance Co.*, 162 La., 620, 110 So. 880, it was held that the Act of 1916 was applicable as well to statements made in an application to establish a policy, or to place it in force after a failure to pay the premiums within the time required, as to statements made in the original application for insurance."

The rights of the parties are fixed by plain and unambiguous provisions of the policy and under plain and unambiguous statutes of both states, and these are the only evidence of the rights of the parties before the Court, and when the Supreme Court of Arkansas rendered a judgment contrary to this evidence under the provisions of the policy and under these statutes, such judgment is based upon no evidence and is void and unconstitutional under the case of *Woodson* v. *Railroad*, 134 U. S. 614.

By examining the cases of *Sturgis National Bank* v. *Maryland Casualty Company* (Mich.) 223 N. W. 367, and *Wilcox* v. *Mass. Protective Association* (Mass.) 165 N. E. 429, the Court

will see that this question has been dealt with in an able manner and the Court has held that statutory policies must be given the construction which their terms call for and that other rules of construction are not applicable such as being construed stronger against the insurer, etc.

As aforesaid, both the statutes of Tennessee and Arkansas require each company to file with the Insurance Department of the State a copy of each policy before issuing them, and when these policies are approved they become *statutory* policies and neither the assured thereunder nor the company issuing them may disregard their terms inasmuch as the rights of *other policyholders* are equally involved.

We submit that this is a clear statement of the relation of other policyholders to the general reserve fund of insurance companies, and that, accordingly, the Arkansas Supreme Court has no constitutional right to disregard these mandatory provisions of these statutes, and to enter a judgment requiring appellant to violate their provisions prohibiting discrimination between insurants of the same class, by paying out funds not due under the written contract which has been filed with and approved by the Insurance Department as required by law. While there is nothing in the record showing that these policies were filed with and approved by the Insurance Department, the law requires that this be done before they can be sold, and there is a presumption that the officials of a State do their duty, which would not be the case if these policies were allowed to be sold without the Department's approval.

It is respectfully submitted that this Court ought to hold

that the Arkansas penalty statute is unconstitutional in toto or unconstitutional when applied to a state of facts showing no want of good faith and that each case herein ought to be reversed and dismissed on the merits.

All *italics* are ours.

Respectfully submitted,

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